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18 BERKLEY INSURANCE COMPANY

19 **UNITED STATES DISTRICT COURT**
20 **CENTRAL DISTRICT OF CALIFORNIA**
21 **WESTERN DIVISION**

22 BERKLEY INSURANCE COMPANY,
23 Plaintiff,
24 v.
25 KENNETH F. LEVIN, et al.,
26 Defendants.

Case No. 2:22-CV-07881-AB-MAR

Judge: Hon. Andre Birotte, Jr.

**STIPULATED PROTECTIVE
ORDER**

1 Plaintiff Berkley Insurance Company (“Berkley”), Defendants Kenneth F.
2 Levin (“Levin”) and Kenneth F. Levin & Associates, Chtd. (“KFLA”) (collectively
3 the “Levin Defendants”), and Defendant Darick Robertson (“Robertson”) stipulate
4 and agree to the following proposed Stipulated Protective Order (“Order”), subject to
5 Court approval, for use in this above-captioned litigation (“Action”):

6
7 1. INTRODUCTION

8 1.1 PURPOSES AND LIMITATIONS

9 Discovery in this action is likely to involve production of confidential,
10 proprietary, or private information for which special protection from public disclosure
11 and from use for any purpose other than prosecuting this litigation may be warranted.
12 Accordingly, the parties hereby stipulate to and petition the Court to enter the
13 following Stipulated Protective Order. The parties acknowledge that this Order does
14 not confer blanket protections on all disclosures or responses to discovery and that the
15 protection it affords from public disclosure and use extends only to the limited
16 information or items that are entitled to confidential treatment under the applicable
17 legal principles. The parties further acknowledge, as set forth in Section 12.3, below,
18 that this Stipulated Protective Order does not entitle them to file confidential
19 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
20 followed and the standards that will be applied when a party seeks permission from
21 the court to file material under seal.

22
23 1.2 GOOD CAUSE STATEMENT

24 Discovery in this action is likely to involve the production of confidential
25 and/or proprietary information for which special protection from public disclosure
26 and from use for any purpose other than prosecution of this action is warranted. Such
27 confidential and proprietary materials and information consist of, among other things,
28 confidential business practices and guidelines, confidential settlement agreements

1 made in underlying matters, personal financial information, internal business
2 communications, information otherwise generally unavailable to the public, or which
3 may be privileged or otherwise protected from disclosure under state or federal
4 statutes, court rules, case decisions, or common law. Accordingly, to expedite the
5 flow of information, to facilitate the prompt resolution of disputes over confidentiality
6 of discovery materials, to adequately protect information the parties are entitled to
7 keep confidential, to ensure that the parties are permitted reasonable necessary uses
8 of such material in preparation for and in the conduct of trial, to address their handling
9 at the end of the litigation, and serve the ends of justice, a protective order for such
10 information is justified in this matter. It is the intent of the parties that information
11 will not be designated as confidential for tactical reasons and that nothing be so
12 designated without a good faith belief that it has been maintained in a confidential,
13 non-public manner, and there is good cause why it should not be part of the public
14 record of this case.

15
16 2. DEFINITIONS

17 2.1 Action: This pending federal lawsuit captioned above.

18 2.2 Challenging Party: A Party or Non-Party that challenges the
19 designation of information or items under this Order.

20 2.3 “CONFIDENTIAL” Information or Items: Information (regardless of
21 how it is generated, stored or maintained) or tangible things that qualify for protection
22 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
23 Statement.

24 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
25 their support staff).

26 2.5 Designating Party: A Party or Non-Party that designates information or
27 items that it produces in disclosures or in responses to discovery as
28 “CONFIDENTIAL.”

1 2.6 Disclosure or Discovery Material: All items or information, regardless
2 of the medium or manner in which it is generated, stored, or maintained (including,
3 among other things, testimony, transcripts, and tangible things), that are produced or
4 generated in disclosures or responses to discovery in this matter.

5 2.7 Expert: A person with specialized knowledge or experience in a matter
6 pertinent to the litigation who has been retained by a Party or its counsel to serve as
7 an expert witness or as a consultant in this Action.

8 2.8 House Counsel: Attorneys who are employees of a party to this Action.
9 House Counsel does not include Outside Counsel of Record or any other outside
10 counsel.

11 2.9 Non-Party: Any natural person, partnership, corporation, association, or
12 other legal entity not named as a Party to this action.

13 2.10 Outside Counsel of Record: Attorneys who are not employees of a party
14 to this Action but are retained to represent or advise a party to this Action and have
15 appeared in this Action on behalf of that party or are affiliated with a law firm which
16 has appeared on behalf of that party, and includes support staff.

17 2.11 Party: Any party to this Action, (Berkley Insurance Company, Kenneth
18 F. Levin, Kenneth F. Levin & Associates, Chtd., and Darick Robertson) including all
19 of its/their officers, directors, employees, consultants, retained experts, and Outside
20 Counsel of Record (and their support staffs).

21 2.12 Producing Party: A Party or Non-Party that produces Disclosure or
22 Discovery Material in this Action.

23 2.13 Professional Vendors: Persons or entities that provide litigation support
24 services (e.g., photocopying, videotaping, translating, preparing exhibits or
25 demonstrations, and organizing, storing, or retrieving data in any form or medium)
26 and their employees and subcontractors.

27 2.14 Protected Material: Any Disclosure or Discovery Material that is
28 designated as “CONFIDENTIAL.”

1 2.15 Receiving Party: A Party that receives Disclosure or Discovery Material
2 from a Producing Party.

3
4 3. SCOPE

5 The protections conferred by this Stipulation and Order cover not only
6 Protected Material (as defined above), but also (1) any information copied or extracted
7 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
8 Protected Material; and (3) any testimony, conversations, or presentations by Parties
9 or their Counsel that might reveal Protected Material.

10 Any use of Protected Material at trial will be governed by the orders of the trial
11 judge. This Order does not govern the use of Protected Material at trial.

12
13 4. DURATION

14 Even after final disposition of this litigation, the confidentiality obligations
15 imposed by this Order will remain in effect until a Designating Party agrees otherwise
16 in writing or a court order otherwise directs. Final disposition will be deemed to be
17 the later of (1) dismissal of all claims and defenses in this Action, with or without
18 prejudice; and (2) final judgment herein after the completion and exhaustion of all
19 appeals, rehearings, remands, trials, or reviews of this Action, including the time
20 limits for filing any motions or applications for extension of time pursuant to
21 applicable law.

22
23 5. DESIGNATING PROTECTED MATERIAL

24 5.1 Exercise of Restraint and Care in Designating Material for Protection.
25 Each Party or Non-Party that designates information or items for protection under this
26 Order must take care to limit any such designation to specific material that qualifies
27 under the appropriate standards. The Designating Party must designate for protection
28 only those parts of material, documents, items, or oral or written communications that

1 qualify so that other portions of the material, documents, items, or communications
2 for which protection is not warranted are not swept unjustifiably within the ambit of
3 this Order.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations
5 that are shown to be clearly unjustified or that have been made for an improper
6 purpose (e.g., to unnecessarily encumber the case development process or to impose
7 unnecessary expenses and burdens on other parties) may expose the Designating Party
8 to sanctions.

9 If it comes to a Designating Party's attention that information or items that it
10 designated for protection do not qualify for protection, that Designating Party must
11 promptly notify all other Parties that it is withdrawing the inapplicable designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in
13 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
14 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
15 under this Order must be clearly so designated before the material is disclosed or
16 produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or electronic documents,
19 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
20 Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
21 "CONFIDENTIAL legend"), to each page that contains protected material. If only a
22 portion or portions of the material on a page qualifies for protection, the Producing
23 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
24 markings in the margins).

25 A Party or Non-Party that makes original documents available for inspection
26 need not designate them for protection until after the inspecting Party has indicated
27 which documents it would like copied and produced. During the inspection and before
28 the designation, all of the material made available for inspection will be deemed

1 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
 2 copied and produced, the Producing Party must determine which documents, or
 3 portions thereof, qualify for protection under this Order. Then, before producing the
 4 specified documents, the Producing Party must affix the “CONFIDENTIAL legend”
 5 to each page that contains Protected Material. If only a portion or portions of the
 6 material on a page qualifies for protection, the Producing Party also must clearly
 7 identify the protected portion(s) (e.g., by making appropriate markings in the
 8 margins).

9 (b) for testimony given in depositions, that the Designating Party identify the
 10 Disclosure or Discovery Material on the record, before the close of the deposition, all
 11 protected testimony and request that those portions of the transcript containing such
 12 protected testimony be designated by the court reporter as “CONFIDENTIAL”
 13 pursuant to this Order.

14 (c) for information produced in some form other than documentary and for any
 15 other tangible items, that the Producing Party affix in a prominent place on the exterior
 16 of the container or containers in which the information is stored the legend
 17 “CONFIDENTIAL.” If only a portion or portions of the information warrants
 18 protection, the Producing Party, to the extent practicable, will identify the protected
 19 portion(s).

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 21 failure to designate qualified information or items does not, standing alone, waive the
 22 Designating Party’s right to secure protection under this Order for such material.

23 Upon timely correction of a designation, the Receiving Party must make
 24 reasonable efforts to assure that the material is treated in accordance with the
 25 provisions of this Order.

26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

27 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
 28

1 designation of confidentiality at any time that is consistent with the Court's
2 Scheduling Order.

3 6.2 Meet and Confer. The Challenging Party will initiate the dispute
4 resolution process under Local Rule 37.1 et seq.

5 6.3 The burden of persuasion in any such challenge proceeding will be on
6 the Designating Party. Frivolous challenges, and those made for an improper purpose
7 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
8 expose the Challenging Party to sanctions. Unless the Designating Party has waived
9 or withdrawn the confidentiality designation, all parties will continue to afford the
10 material in question the level of protection to which it is entitled under the Producing
11 Party's designation until the Court rules on the challenge.

12 13 7. ACCESS TO AND USE OF PROTECTED MATERIAL

14 7.1 Basic Principles. A Receiving Party may use Protected Material that is
15 disclosed or produced by another Party or by a Non-Party in connection with this
16 Action only for prosecuting, defending, or attempting to settle this Action. Such
17 Protected Material may be disclosed only to the categories of persons and under the
18 conditions described in this Order. When the Action has been terminated, a Receiving
19 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

20 Protected Material must be stored and maintained by a Receiving Party at a
21 location and in a secure manner that ensures that access is limited to the persons
22 authorized under this Order.

23 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
24 otherwise ordered by the court or permitted in writing by the Designating Party, a
25 Receiving Party may disclose any information or item designated
26 "CONFIDENTIAL" only to:

27 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as
28 employees of said Outside Counsel of Record to whom it is reasonably necessary to

1 disclose the information for this Action;

2 (b) the officers, directors, and employees (including House Counsel) of the
3 Receiving Party to whom disclosure is reasonably necessary for this Action;

4 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure
5 is reasonably necessary for this Action and who have signed the “Acknowledgment
6 and Agreement to Be Bound” (Exhibit A);

7 (d) the Court and its personnel;

8 (e) court reporters and their staff;

9 (f) professional jury or trial consultants, mock jurors, and Professional Vendors
10 to whom disclosure is reasonably necessary for this Action and who have
11 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12 (g) the author or recipient of a document containing the information or a
13 custodian or other person who otherwise possessed or knew the information;

14 (h) during their depositions, witnesses and attorneys for witnesses, in the
15 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
16 requests that the witness sign the form attached as Exhibit A hereto; and (2) they will
17 not be permitted to keep any confidential information unless they sign the
18 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
19 agreed by the Designating Party or ordered by the court. Pages of transcribed
20 deposition testimony or exhibits to depositions that reveal Protected Material may be
21 separately bound by the court reporter and may not be disclosed to anyone except as
22 permitted under this Stipulated Protective Order; and

23 (i) any mediator or settlement officer, and their supporting personnel, mutually
24 agreed upon by any of the parties engaged in settlement discussions.

25
26 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
27 OTHER LITIGATION

28 If a Party is served with a subpoena or a court order issued in other litigation

1 that compels disclosure of any information or items designated in this Action as
2 “CONFIDENTIAL,” that Party must:

3 (a) promptly notify in writing the Designating Party. Such notification will
4 include a copy of the subpoena or court order;

5 (b) promptly notify in writing the party who caused the subpoena or order to
6 issue in the other litigation that some or all of the material covered by the subpoena
7 or order is subject to this Protective Order. Such notification will include a copy of
8 this Stipulated Protective Order; and

9 (c) cooperate with respect to all reasonable procedures sought to be pursued by
10 the Designating Party whose Protected Material may be affected.

11 If the Designating Party timely seeks a protective order, the Party served with
12 the subpoena or court order will not produce any information designated in this action
13 as “CONFIDENTIAL” before a determination by the court from which the subpoena
14 or order issued, unless the Party has obtained the Designating Party’s permission. The
15 Designating Party will bear the burden and expense of seeking protection in that court
16 of its confidential material and nothing in these provisions should be construed as
17 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
18 directive from another court.

19
20 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
21 PRODUCED IN THIS LITIGATION

22 (a) The terms of this Order are applicable to information produced by a Non-
23 Party in this Action and designated as “CONFIDENTIAL.” Such information
24 produced by Non-Parties in connection with this litigation is protected by the
25 remedies and relief provided by this Order. Nothing in these provisions should be
26 construed as prohibiting a Non-Party from seeking additional protections.

27 (b) In the event that a Party is required, by a valid discovery request, to produce
28 a Non-Party’s confidential information in its possession, and the Party is subject to an

1 agreement with the Non-Party not to produce the Non-Party's confidential
2 information, then the Party will:

3 (1) promptly notify in writing the Requesting Party and the Non-Party
4 that some or all of the information requested is subject to a confidentiality agreement
5 with a Non-Party;

6 (2) promptly provide the Non-Party with a copy of the Stipulated
7 Protective Order in this Action, the relevant discovery request(s), and a reasonably
8 specific description of the information requested; and

9 (3) make the information requested available for inspection by the Non-
10 Party, if requested.

11 (c) If the Non-Party fails to seek a protective order from this court within 14
12 days of receiving the notice and accompanying information, the Receiving Party may
13 produce the Non-Party's confidential information responsive to the discovery request.
14 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
15 any information in its possession or control that is subject to the confidentiality
16 agreement with the Non-Party before a determination by the court.

17 Absent a court order to the contrary, the Non-Party shall bear the burden and
18 expense of seeking protection in this court of its Protected Material.

19
20 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
22 Protected Material to any person or in any circumstance not authorized under this
23 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
24 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
25 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
26 persons to whom unauthorized disclosures were made of all the terms of this Order,
27 and (d) request such person or persons to execute the "Acknowledgment and
28 Agreement to Be Bound" that is attached hereto as Exhibit A.

1
2 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
3 PROTECTED MATERIAL

4 When a Producing Party gives notice to Receiving Parties that certain
5 inadvertently produced material is subject to a claim of privilege or other protection,
6 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
7 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
8 may be established in an e-discovery order that provides for production without prior
9 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
10 parties reach an agreement on the effect of disclosure of a communication or
11 information covered by the attorney-client privilege or work product protection, the
12 parties may incorporate their agreement in the stipulated protective order submitted
13 to the court.

14
15 12. MISCELLANEOUS

16 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
17 person to seek its modification by the Court in the future.

18 12.2 Right to Assert Other Objections. By stipulating to the entry of this
19 Protective Order no Party waives any right it otherwise would have to object to
20 disclosing or producing any information or item on any ground not addressed in this
21 Stipulated Protective Order. Similarly, no Party waives any right to object on any
22 ground to use in evidence of any of the material covered by this Protective Order.

23 12.3 Filing Protected Material. A Party that seeks to file under seal any
24 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
25 only be filed under seal pursuant to a court order authorizing the sealing of the specific
26 Protected Material at issue. If a Party's request to file Protected Material under seal is
27 denied by the court, then the Receiving Party may file the information in the public
28 record unless otherwise instructed by the court.

1
2 13. FINAL DISPOSITION

3 After the final disposition of this Action, as defined in paragraph 4, within 60
4 days of a written request by the Designating Party, each Receiving Party must return
5 all Protected Material to the Producing Party or destroy such material. As used in this
6 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
7 summaries, and any other format reproducing or capturing any of the Protected
8 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
9 must submit a written certification to the Producing Party (and, if not the same
10 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
11 (by category, where appropriate) all the Protected Material that was returned or
12 destroyed and (2) affirms that the Receiving Party has not retained any copies,
13 abstracts, compilations, summaries or any other format reproducing or capturing any
14 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
15 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
16 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
17 reports, attorney work product, and consultant and expert work product, even if such
18 materials contain Protected Material. Any such archival copies that contain or
19 constitute Protected Material remain subject to this Protective Order as set forth in
20 Section 4 (DURATION).

21
22 14. Any willful violation of this Order may be punished by civil or criminal
23 contempt proceedings, financial or evidentiary sanctions, reference to disciplinary
24 authorities, or other appropriate action at the discretion of the Court.

25
26 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
27
28

1
2 Dated: March 20, 2023

HINSHAW & CULBERTSON LLP

3 /s/ Michael A.S. Newman

4 Michael A.S. Newman

5 Jason Schulze

6 Sarah Anderson

7 *Attorneys for Plaintiff Berkley Insurance
Company*

8 Dated: March 20, 2023

FRANKLIN SOTO LEEDS LLP

9 /s/ Joshua D. Franklin

10 Joshua D. Franklin

11 Cheryl Dunn Soto

12 *Attorneys for Defendants Kenneth F. Levin
and Kenneth F. Levin & Associates, Chtd.*

13 Dated: March 20, 2023

JOHNSON & JOHNSON LLP

14 /s/ Melissa Eubanks

15 Melissa N. Eubanks

16 Neville L. Johnson

17 Douglas L. Johnson

18 *Attorneys for Defendant Darick Robertson*

19 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

20
21 DATED: April 11, 2023



22 HON. MARGO A. ROCCONI

23 United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of
 perjury that I have read in its entirety and understand the Stipulated Protective Order
 that was issued by the United States District Court for the Central District of
 California on ____ [date] in the case of *Berkley Insurance Company v. Kenneth F.*
Levin, Kenneth F. Levin & Associates, Chtd., and Darick Robertson, Case No. 2:22-
 CV-07881-AB-MAR. I agree to comply with and to be bound by all the terms of this
 Stipulated Protective Order and I understand and acknowledge that failure to so
 comply could expose me to sanctions and punishment in the nature of contempt. I
 solemnly promise that I will not disclose in any manner any information or item that
 is subject to this Stipulated Protective Order to any person or entity except in strict
 compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action. I hereby appoint _____ [print
 or type full name] of _____ [print or type full address and
 telephone number] as my California agent for service of process in connection with
 this action or any proceedings related to enforcement of this Stipulated Protective
 Order.

Date: _____

City and State where signed: _____

Printed name: _____

Signature: _____